

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by	)	
Qwest Communications International, Inc.	)	WC Docket No. 02-189
for Authorization to Provide	)	
In-Region, InterLATA Services	)	
in the States of Montana, Utah,	)	
Washington, and Wyoming	)	

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EVALUATION OF THE  
UNITED STATES DEPARTMENT OF JUSTICE

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Colorado PUC Comments	Evaluation of the Colorado Public Utilities Commission, <i>In re: Application by Qwest Communications International, Inc., for Provision of In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska, and North Dakota</i> , FCC WC Docket No. 02-148 (July 2, 2002).
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Montana PSC Comments	Evaluation of Montana Public Service Commission, <i>In re: Application by Qwest Corporation Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Montana, Utah, Washington, and Wyoming</i> , FCC WC Docket No. 02-189 (Aug. 1, 2002).
Montana PSC Public Interest Order	Final Report on Qwest's Compliance with the Public Interest Requirement, <i>In re: Investigation into Qwest Corporation's Compliance with Section 271 of the Telecommunications Act of 1996</i> , Montana PSC Docket No. D2000.5.70 (July 5, 2002), <i>attached to</i> Qwest Br. App. P Vol. 1 as Tab 6.
Utah PSC Comments	Consultative Report of the Public Service Commission of Utah, <i>In re: Application by Qwest Communications International, Inc., for Provision of In-Region, InterLATA Services in Montana, Utah, Washington, and Wyoming</i> , FCC WC Docket No. 02-189 (Aug. 1, 2002).
Utah PSC Section 271 Compliance Order	Final Order Regarding Qwest § 271 Compliance, <i>In re: Application of Qwest Corporation for Approval of Compliance with 47 U.S.C. § 271(d)(2)(B)</i> , Utah PSC Docket No. 00-049-08 (July 8, 2002), <i>available at</i> < <a href="http://www.psc.state.ut.us/telecom/02orders/Jul/0004908forq.htm">http://www.psc.state.ut.us/telecom/02orders/Jul/0004908forq.htm</a> >.
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Utah SGAT	Statement of Generally Available Terms and Conditions for Interconnection, Unbundled Network Elements, Ancillary Services, and Resale of Telecommunication Services Provided by Qwest Corporation in the State of Utah (Sixth Revision) (July 2, 2002), <i>attached to</i> Qwest Br. as App. B-UT.
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Qwest Br.	Brief of Qwest Communications International Inc. in Support of Consolidated Application for Authority to Provide In-Region, InterLATA Services in Montana, Utah, Washington, and Wyoming, <i>In re: Qwest Communications International Inc. Consolidated Application for Authority to Provide In-Region, InterLATA Services in Montana, Utah, Washington, and Wyoming</i> , FCC WC Docket No. 02-189 (July 12, 2002).
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Qwest White Pages Listings <i>Ex Parte</i>	Qwest International Inc., Clarification of Facilities-Based Line Counts Based on White Pages Listings, Qwest <i>Ex Parte</i> Submission, FCC WC Docket Nos. 02-148 & -189 (Aug. 1, 2002).



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AT&T Fassett/Mercer Decl.	Joint Supplemental Declaration of Dean Fassett/Robert Mercer on Behalf of AT&T Corp., <i>attached to</i> AT&T Comments as Tab E.
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AT&T Lieberman/Pitkin Decl.	Joint Declaration of Michael R. Lieberman and Brian F. Pitkin on Behalf of AT&T Corp., <i>attached to</i> AT&T Comments as Tab C.
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AT&T Qwest Multistate I Reply Comments	Reply Comments of AT&T Corp., <i>In re: Qwest Communications International, Inc. Consolidated Application for Authority to Provide In-Region, InterLATA Services in Colorado, Idaho, Iowa, Nebraska, and North Dakota</i> , FCC WC Docket No. 02-148 (July 29, 2002).
Covad Comments	Comments of Covad Communications Company, <i>In re: Applications by Qwest Communications International, Inc., for Authorization to Provide In-Region, InterLATA Services in the States of Montana, Utah, Washington, and Wyoming</i> , FCC WC Docket No. 02-189 (Aug. 1, 2002).
Covad July Data <i>Ex Parte</i>	Covad Communications Company, Data on July Line-Shared Loop Orders, Covad <i>Ex Parte</i> Submission, FCC WC Docket Nos. 02-189 (Aug. 20, 2002).
WorldCom Comments	Comments of WorldCom, Inc. on the Application by Qwest Communications International, Inc. to Provide In-Region, InterLATA Services in Montana, Utah, Washington, and Wyoming, <i>In re: Qwest Communications International, Inc. Consolidated Application for Authority to Provide In-Region, InterLATA Services in Montana, Utah, Washington, and Wyoming</i> , FCC WC Docket No. 02-189 (Aug. 1, 2002).
WorldCom Lichtenberg Decl.	Declaration of Sherry Lichtenberg, <i>attached to</i> WorldCom Comments as Tab 1.

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Washington, and Wyoming	)	

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EVALUATION OF THE  
UNITED STATES DEPARTMENT OF JUSTICE

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**Introduction and Summary**

The United States Department of Justice (“the Department”), pursuant to Section 271(d)(2)(A) of the Telecommunications Act of 1996<sup>1</sup> (“the 1996 Act”), submits this Evaluation of the Joint Application filed by Qwest Communications International, Inc. on July 12, 2002, to provide in-region, interLATA services in Montana, Utah, Washington, and Wyoming. Qwest’s Joint Application to the Federal Communications Commission (“FCC” or “Commission”) is its first for long distance authority in each of these states. It follows close on the heels of Qwest’s Joint Application for long distance authority in Colorado, Idaho, Iowa, Nebraska, and North Dakota and, in fact, was filed with the Commission before the Department’s Evaluation of Qwest’s first multistate application (“DOJ Qwest Multistate I Evaluation”) was filed.<sup>2</sup> In its Qwest Multistate I Evaluation the Department stated that it could

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<sup>1</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified as amended in scattered sections of 47 U.S.C.).

<sup>2</sup> This Evaluation incorporates by reference the entire DOJ Qwest Multistate I Evaluation (filed July 23, 2002).

not support Qwest's first application as filed because of certain gaps in the record, but noted that Qwest had subsequently submitted additional evidence which, if sufficiently meaningful and reliable, could support approval of the application. As filed by Qwest, the record in this application is largely the same as that available when the Department submitted its Qwest Multistate I Evaluation.<sup>3</sup> Since then, however, numerous additional comments and replies have been filed in both dockets. This Evaluation, which takes into account the entire record pertaining to Qwest's first multistate application, therefore focuses on changes in the record since that initial filing as well as issues specific to Montana, Utah, Washington, and Wyoming.

As the Department has explained, in-region, interLATA entry by a regional Bell Operating Company ("BOC") should be permitted only when the local markets in a state have been "fully and irreversibly" opened to competition.<sup>4</sup> Qwest's Application demonstrates that it has succeeded in opening its local markets in Montana, Utah, Washington, and Wyoming in many respects. However, Qwest's assertions that it provides adequate manual order processing and electronically auditable billing for UNE-platform service remain questionable, although evidence submitted by Qwest after its application was filed may support the FCC's approval of this application at the conclusion of this proceeding. It also is unclear whether the UNE rates in Montana and Wyoming, which were developed recently, are appropriately cost-based.<sup>5</sup> The Department therefore recommends that the Commission approve Qwest's application for long

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<sup>3</sup> See DOJ Qwest Multistate I Evaluation at -x-, 22 n.97 (citing evidence submitted as late as July 18, 2002).

<sup>4</sup> See DOJ Oklahoma I Evaluation at vi-vii, 36-51.

<sup>5</sup> Cf. DOJ Qwest Multistate I Evaluation at 2 n.3, 31-32 (expressing concern about whether pricing in Idaho, Iowa, Nebraska, and North Dakota is appropriately cost-based).

distance authority in these states only if it is able to assure itself that the concerns expressed in this Evaluation have been resolved.<sup>6</sup>

## **I. State Commission Section 271 Proceedings**

The Montana Public Service Commission (“Montana PSC”), the Utah Public Service Commission (“Utah PSC”), the Washington Utilities and Transportation Commission (“Washington UTC”), and the Wyoming Public Service Commission (“Wyoming PSC”), working independently and together, have facilitated the development of competition in their respective local telecommunications markets.

### **A. Regional Oversight Committee Proceedings/OSS Test**

In 1999, the Regional Oversight Committee (“ROC”), a cooperative group of state regulatory commissions in the Qwest local service region, including all four of the applicant

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<sup>6</sup> The Commission has yet to determine whether certain interconnection agreements entered into by Qwest with various competitors should have been filed pursuant to the 1996 Act and, if so, whether Qwest’s failure to file them violated various provisions of the Act sufficient to warrant remedies including withholding, suspension or revocation of Section 271 authority. *See generally* DOJ Qwest Multistate I Evaluation at 2-5 (discussing Qwest’s “secret” agreements with certain competitors and the possible impact of Qwest’s failure to file on the pending Section 271 docket). Qwest appears to have notified the state commissions in its region of the investigation into these matters by Minnesota in March and April 2002, and to have provided copies of the agreements for state commission review, although Qwest did not specifically file the agreements for Section 251 approval in those states. Since then, a number of states have inquired further into the matter and, in response, Qwest has submitted additional agreements for state commission review. *See* Qwest Unfiled Agreements State Review *Ex Parte* at 1-3 & Attachs. (listing agreements with “currently effective obligations related to Section 251 interconnection matters”). Most recently, Qwest has committed to file for Section 251 approval “all contracts, agreements, or letters of understanding . . . that create obligations to meet the requirements of Section 251(b) or (c) on a going-forward basis[.]” including agreements that were entered into prior to the adoption of its new “broad” review policy but that remain effective. Qwest Unfiled Agreements Commitment *Ex Parte* at 2. As stated previously, the Department defers to the Commission’s assessment of whether Qwest’s earlier failure to file these agreements violated Sections 251 or 252. DOJ Qwest Multistate I Evaluation at 3.

In addition, since the Department filed its Qwest Multistate I Evaluation, Qwest has announced its intent to analyze and possibly restate financial results related to the accounting of “certain optical capacity asset sale transactions.” Qwest Accounting Policies and Practices Press Release at 1. The significance of such a restatement for analysis of Qwest’s prior compliance (or non-compliance) with Section 271 is unclear. *Compare* AT&T Public Interest Standard *Ex Parte* at 1-3 (arguing that any restatement related to Qwest’s “sale” of lit fiber indefeasible rights of use (“IRUs”) is additional evidence that it has been providing services in violation of Section 271) *with* Qwest Accounting Policies and Practices *Ex Parte* at 1-2 (asserting that although certain financial transactions may not have been accounted for in accord with generally accepted accounting principles, the accounting issues identified to date do not implicate the requirements of Section 271 or 272). As with respect to the unfiled agreements issues, the Department defers to the Commission’s assessment of this matter.

states,<sup>7</sup> initiated a collaborative process focusing on the attainment of Section 271 authority by examining the legal framework for opening local markets, and by designing and executing a third-party OSS test.<sup>8</sup> As explained in the Department's Qwest Multistate I Evaluation, repeated iterations of documentation, systems and processes, and substantial re-testing throughout the testing conducted by KPMG, improved Qwest's OSS to the point where only a few questions regarding their adequacy to support competitive local entry remain.<sup>9</sup>

## **B. Multistate Collaborative Process**

The Montana PSC, Utah PSC, and Wyoming PSC worked with four other states in the Multistate Collaborative Process ("MCP"), which involved a fact-finding process on aspects of the competitive checklist, Section 272, Track A requirements, and the public interest analysis, including post-entry performance assurance.<sup>10</sup> The MCP included numerous collaborative workshops, during which CLECs, Qwest, and state commission staffs addressed and recommended resolution of disputed issues, with each state retaining authority to accept or reject such recommendations.<sup>11</sup>

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<sup>7</sup> See Qwest Br. at 2 (noting the participation of nine other Qwest region state commissions as well). See generally Qwest Notarianni/Doherty Decl. (extensive description of test development, implementation, and results).

<sup>8</sup> Qwest Notarianni/Doherty Decl. ¶ 19 & Ex. 3 (letter from ROC to then USWest, proposing nationwide, collaborative OSS test (June 23, 1999)).

<sup>9</sup> DOJ Qwest Multistate I Evaluation at 6-8. Only 1 Observation and 14 Exceptions were designated "closed/unresolved" by the conclusion of the test. Qwest Notarianni/Doherty Decl. ¶ 39 n.39.

<sup>10</sup> See Qwest Br. at 6 (noting the participation of Idaho Public Utility Commission, Iowa Utilities Board, New Mexico Public Regulation Commission, and North Dakota Public Service Commission); see also *id.* at 7 (noting the Washington Utilities and Transportation Commission's and the Nebraska Public Utility Commission's participation in the MCP's review of the Qwest Performance Assurance Plan).

<sup>11</sup> See *id.* at 6-7.

### C. Individual State Commission Proceedings

The Montana PSC extensively reviewed the MCP record<sup>12</sup>; convened a “Montana CLEC Forum” to give CLECs the opportunity to provide information about their commercial experience dealing with Qwest<sup>13</sup>; conducted UNE pricing proceedings to establish initial rates and recently accepted Qwest’s adjustment of core UNE rates using the new Colorado rates as benchmarks<sup>14</sup>; adopted the performance measurements and standards developed through the ROC,<sup>15</sup> including, after further review and modification, the “QPAP” post-entry performance assurance plan<sup>16</sup>; and recommended that the FCC approve Qwest’s application subject to certain conditions.<sup>17</sup>

The Utah PSC extensively reviewed the MCP record<sup>18</sup>; adopted the performance measurements and standards developed through the ROC,<sup>19</sup> as well as the QPAP<sup>20</sup>; and held UNE

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<sup>12</sup> Montana PSC Comments at 3; *see* Qwest Br. at 8.

<sup>13</sup> Montana PSC CLEC Forum Report at 9 (stating intent to hold forums on a regular basis post-Section 271 approval); *see* Montana PSC Comments at 53-56; *see also* Qwest Br. at 9 (noting Montana PSC has directed Qwest to participate in future forums).

<sup>14</sup> Montana PSC Comments at 4-5, 56-57.

<sup>15</sup> *See id.* at 19-22.

<sup>16</sup> *Id.* at 3-4, 52-53; *see also* Qwest Hays Decl. at ¶ 79.

<sup>17</sup> Montana PSC Comments at 57. The Montana PSC conditioned its recommendation of approval upon Qwest’s “[mitigation of] the price squeeze concern by filing with the Commission, on or before October 1, 2002, a full revenue requirements and rate design case[] and [complying] with Commission direction on reverse line sharing.” *Id.*; *see also id.* at 9-10, 45-46. The Department supports the Montana PSC’s requirement for Qwest to file revenue and rate materials to enable a review of the intrastate access and retail rate structure, *see* Montana PSC Public Interest Order at 27-29, but notes that these materials will not be submitted until shortly before the FCC must act upon this application for long distance authority. The FCC has yet to require reverse line-sharing for Section 271 competitive checklist compliance. *See FCC Georgia/Louisiana Order* ¶ 157 & n.562 (citing *FCC Line Sharing Order* and *FCC Line Sharing Reconsideration Order*); *see also FCC Texas Order* ¶ 330.

<sup>18</sup> Utah PSC Comments at 2-3.

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *See id.* at 5; *see also* Utah SGAT Ex. K (Utah QPAP).

pricing proceedings to establish initial rates and subsequently accepted adjusted rates based on the new Colorado rates as benchmarks.<sup>21</sup>

The Washington UTC held adjudicated proceedings on competitive checklist items, Track A, and Section 272 requirements<sup>22</sup>; adopted the performance measurements and standards developed through the ROC<sup>23</sup>; participated in the MCP's review of the QPAP, which it subsequently adopted<sup>24</sup>; and conducted proceedings to establish initial UNE rates, after which it accepted adjusted rates based on the new Colorado rates as benchmarks.<sup>25</sup>

The Wyoming PSC extensively reviewed the MCP record<sup>26</sup>; conducted pricing proceedings to establish UNE rates and then accepted adjusted rates based on the new Colorado rates as benchmarks<sup>27</sup>; and adopted the performance measurements and standards developed through the ROC<sup>28</sup>; but raised significant concerns about its ability to require changes in the future to the Wyoming QPAP, which it left to the FCC to resolve.<sup>29</sup>

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<sup>21</sup> See Utah PSC Comments at 4; *see also* Utah SGAT Ex. A; Utah Section 271 Compliance Order at 2. *But see* Utah PSC UNE Rates Recons. Order at 1 (granting reconsideration of UNE rates).

<sup>22</sup> Washington UTC Comments at 4-7.

<sup>23</sup> *Id.* at 9, 29.

<sup>24</sup> *Id.* at 29.

<sup>25</sup> *Id.* at 15-17; *see also* Qwest Br. at 11.

<sup>26</sup> Wyoming PSC Comments at 1-2 & Attachs. A-C, E-F, H.

<sup>27</sup> *Id.* at 6-7 & Attach. J ¶¶ 4-6.

<sup>28</sup> *Id.* at 4-6 & Attach. J ¶ 7.

<sup>29</sup> *Id.* at 10-16 & Attachs. D, I ¶¶ 41-48; *see also* Qwest Br. at 12, 185-86. In somewhat similar circumstances the Department has urged the FCC to ensure the BOC's "wholesale customers . . . have access to timely and effective enforcement of their interconnection agreements . . . including the performance provisions and remedies contained in these agreements." DOJ Arkansas/Missouri Evaluation at 13; *cf. FCC Arkansas/Missouri Order* ¶¶ 131-34 (finding Arkansas PSC had sufficient authority to enforce performance assurance plan and SBC's failure to implement certain changes to the plan ordered by the Texas PUC did not preclude approval of its Section 271 application).

## **II. Entry into the Local Telecommunications Markets**

In assessing whether the local markets in a state are fully and irreversibly open to competition, the Department looks first to the actual entry in a market.<sup>30</sup> But the Department does not broadly presume that all three entry tracks -- facilities-based, unbundled network elements (“UNEs”), and resale -- are open or closed on the basis of an aggregate level of entry alone.<sup>31</sup> The following table reports CLEC entry in Montana, Utah, Washington, and Wyoming in terms of shares of total residential and business lines served and shares of residential and business lines served by each mode of entry.

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<sup>30</sup> See DOJ Pennsylvania Evaluation at 3-4 (“The Department first looks to actual competitive entry, because the experience of competitors seeking to enter a market can provide highly probative evidence about the presence or absence of artificial barriers to entry. Of course, entry barriers can differ by types of customers or geographic areas within a state, so the Department looks for evidence relevant to each market in a state.” (Footnote omitted.)).

<sup>31</sup> See, e.g., DOJ Georgia/Louisiana I Evaluation at 7 (“Although the Department presumes that fully facilities-based competition is not hindered in a competitively significant manner based on the entry recorded in Georgia, the amount of entry does not justify extending such a presumption to other modes of entry in Georgia.”); DOJ Missouri I Evaluation at 6-7 (“The Department presumes that opportunities to serve business customers by fully facilities-based carriers and resellers are available in Missouri, based on the entry efforts reflected in SBC’s application. There is significantly less competition to serve residential customers. There also is less competition by firms seeking to use UNEs, including the UNE-platform, and there are some indications that a failure by SBC to satisfy all of its obligations may have constrained this type of competition.” (Footnotes omitted.)).



### CLEC Entry by State<sup>32</sup>

		Montana	Utah	Washington	Wyoming
	<b>Total Lines<sup>33</sup></b>	368,302	1,323,717	2,886,955	250,584
	<b>Total Bus. Lines</b>	107,913	569,019	1,120,336	91,604
	<b>Total Res. Lines</b>	260,389	754,698	1,766,619	158,980
<b>CLEC Shares</b>	<b>% Total Lines</b>	5.9	24.8	20.2	11.6
	<b>% Total Bus.</b>	14.2	46.9	43.5	25.2
	<b>% Total Res.</b>	2.4	8.2	5.3	3.9
	<b>% Bus. Fac-B</b>	7.3	42.1	37.7	0.0
	<b>% Bus. UNE-P<sup>34</sup></b>	3.6	3.5	4.1	23.3
	<b>% Bus. Resale</b>	3.3	1.3	1.7	1.9
	<b>% Res. Fac-B</b>	0.0	8.0	4.8	0.0
	<b>% Res. UNE-P<sup>35</sup></b>	0.0	0.02	0.1	3.6
	<b>% Res. Resale</b>	2.4	0.2	0.5	0.3

<sup>32</sup> See Qwest Teitzel Decl. at 21 tbl. (line counts as of April 2002) & Exs. DLT-Track A/PI-MT-1 at 2, 4, -PI-UT-1 at 2, 4, -PI-WA-1 at 2, 5, -PI-WY-1 at 2, 4 (consecutive pagination); Qwest Errata *Ex Parte* Attach. 5 at 3. The second three categories report CLEC lines as percentages of total lines, business lines, and residential lines, respectively; the last six categories report percentages of business and residential lines served by CLECs by means of each mode of entry, i.e., facilities-based (service via primarily a CLEC's own fiber optic network that is either connected directly to the customer premises or connected through loops leased from the BOC), UNE-platform (a combination of loop, switch, and transport elements), and resale.

Qwest offers two sets of calculations of line estimates, *see* Qwest Teitzel Decl. ¶¶ 33-37, and, as explained previously, the Department generally relies on the E-911 database entries, *see, e.g.*, DOJ Georgia/Louisiana I Evaluation at 8 n.24; *see also* DOJ Qwest Multistate I Evaluation at 12 n.48. However, E-911 database entries understate the number of CLEC facilities-based lines in the states examined here because many of the local exchanges served by such carriers do not yet have E-911 capability. Qwest Teitzel Decl. at 19 n.44, 21 n.46; *see also* Qwest White Pages Listings *Ex Parte* at 2-3. For instance, white pages listings show that facilities-based CLECs serve 5,272 residential lines in Montana, and 623 residential and 410 business lines in Wyoming, although these lines do not appear in the E-911 database. Qwest Teitzel Decl. at 26 tbl.

<sup>33</sup> Figures report total lines in Qwest's service area in these states, each of which has several incumbent local exchange carriers other than Qwest. *See, e.g., id.* ¶ 34 & n.43.

<sup>34</sup> Qwest Multistate I UNE-Platform Calculations *Ex Parte* at 1-2 (explaining estimate of business and residential line counts).

<sup>35</sup> *Id.*

Given the regional nature of Qwest's OSS, the Department evaluates the state of entry regionwide, taking note that pricing or other state-specific factors may significantly affect the degree to which CLECs use a mode of entry in a particular state. Not surprisingly, the modes of entry being employed by CLECs in Montana, Utah, Washington, and Wyoming are consistent with the evidence on entry the Department recently evaluated for other states in the region.<sup>36</sup> In the states addressed in this application, the amounts of entry, and the absence of evidence that entry has been unduly hindered by problems with obtaining inputs from Qwest, lead the Department to conclude that opportunities are available to competitive facilities-based and UNE-platform carriers serving business customers. The amounts of competition for business customers by facilities-based CLECs in Utah and Washington, and by those using the UNE-platform in Wyoming, are particularly notable.

Regarding competition for residential customers, the Department finds that the facilities-based mode of entry is open in Utah and Washington, due in part to the increasingly widespread availability of service provided by AT&T Broadband to these customers over its cable facilities.<sup>37</sup> Although in Montana and Wyoming there is less competition to serve residential customers via facilities (including UNE loops),<sup>38</sup> and in all four states there is less competition to serve such customers by means of the UNE-platform, the Department does not believe there are any material non-price obstacles to such competition in those states created by Qwest. However, the lack of such entry may reflect, in part, the higher UNE pricing that was in effect for most of the period preceding this application. The Colorado PUC ordered reductions in certain UNE rates within

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<sup>36</sup> DOJ Qwest Multistate I Evaluation at 12-14.

<sup>37</sup> Qwest Teitzel Decl. at Exs. DLT-Track A/PI-UT-4 at 1-4, -PI-WA-4 at 2-5.

<sup>38</sup> *See supra* note 32.

weeks of Qwest's filing of this application,<sup>39</sup> and Qwest reduced prices in Montana, Utah, Washington, and Wyoming on the basis of the reductions ordered by the Colorado PUC.<sup>40</sup>

The Department also concludes, due largely to the absence of CLEC complaints, that Qwest has fulfilled its obligations to open the resale mode of entry to competition in all four states.

### **III. Pre-Order/Order Integration and Manual Handling**

The Department's Qwest Multistate I Evaluation raised concerns about whether Qwest had adequately integrated its pre-order and ordering interfaces given the high reject rates of orders received via the electronic data interface ("EDI") and contentions that Qwest was not providing a fully parsed Customer Service Record ("CSR").<sup>41</sup> Since that Evaluation was filed, Qwest has submitted evidence that lends additional support to its claim to have adequately integrated its pre-order and order interfaces. One CLEC has submitted a letter describing its successful implementation of address validation and CSR integration,<sup>42</sup> and HP, which served as the "pseudo-CLEC" during the ROC third-party OSS test, has provided further explanation of the integration that it implemented during that test<sup>43</sup> as well as data showing that its reject rates

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<sup>39</sup> Qwest Br. at 159-60.

<sup>40</sup> *See id.* at 161-69. *But see infra* text Section VII.

<sup>41</sup> DOJ Qwest Multistate I Evaluation at 14-16 (citing reject rates of approximately 30 percent for January-May 2002). The Department ultimately considered the integration issues as "relevant to the degree and adequacy of Qwest's manual handling of CLEC orders." *Id.* at 16.

<sup>42</sup> Qwest Notarianni/Doherty Decl. Attach. 15 at 1 (New Access Integration Letter); Qwest New Access Integration E-Mail *Ex Parte* at 3.

<sup>43</sup> HP Qwest Multistate I Pre-Order/Order Integration *Ex Parte* at 1-2 (explaining Qwest provided CSR and address validation information in parsed format, and HP successfully developed and implemented integration of the functions).

declined over the course of the test.<sup>44</sup> Such a decline in reject rates suggests that successful integration of the relevant interfaces is possible.

In their comments on this application CLECs no longer claim that Qwest has failed to parse its CSRs.<sup>45</sup> Instead, AT&T has criticized the method by which the parsed fields are organized.<sup>46</sup> Although a less complicated organization may be preferable for use in AT&T's own systems, it does not appear to preclude the full and successful integration of pre-order and order functions for all CLECs.<sup>47</sup>

Qwest's order reject rates continue to be high.<sup>48</sup> WorldCom correctly asserts that the reject rates would be lowered if Qwest made two changes to its order processes to permit CLECs to migrate end-users by telephone number ("TN migration") and to permit CLECs to "migrate as specified" by listing the features desired on each account (rather than requiring CLECs to also list those features to be dropped).<sup>49</sup> In this regard, Qwest's announcement that CLECs need no

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<sup>44</sup> Qwest Multistate I Pre-Order/Order Integration *Ex Parte* at 6 tbl.1 (showing HP's reject rate for the final four-month retest period averaged 12 percent); *KPMG Final Report* at 81 (reporting HP's overall test reject rate was 30 to 40 percent).

<sup>45</sup> See DOJ Qwest Multistate I Evaluation at 15 & n.66 (citing AT&T's and WorldCom's claims that Qwest had failed to provide fully parsed CSRs).

<sup>46</sup> See AT&T Finnegan/Connolly/Menezes Decl. ¶¶ 136-38 (explaining information in Qwest's parsed CSR is grouped by universal service ordering codes ("USOCs") rather than by telephone number ("TN"), and this "illogical and cumbersome orientation" precludes AT&T from fully integrating pre-order and order information in its systems).

<sup>47</sup> See Qwest Notarianni/Doherty Decl. ¶ 192, Exs. 13 (Telcordia Letter), 14 (Nightfire Letter). See generally Qwest Multistate I Pre-Order/Order Integration *Ex Parte* (describing integration by HP and by CLEC New Access).

<sup>48</sup> Qwest Performance Results *Ex Parte* (Regional Report) at 81(PID PO-4B-1 & -2 (LSRs Rejected for EDI -- Rejected Manually and Auto-Rejected (Percent) (Diagnostic)) (approximately 29 percent for July 2002 regionwide)).

<sup>49</sup> WorldCom Lichtenberg Decl. ¶¶ 41-43 (asserting other BOCs have been able to implement these processes promptly); see also DOJ Qwest Multistate I Evaluation at 16 (Qwest's failure to offer TN migration and unique definition of "migrate as specified" tend to increase reject rates); cf. *FCC Georgia/Louisiana Order* ¶ 122 (noting that BellSouth's implementation of TN migration reduced the number of address-related rejects).

longer list features to be dropped when migrating customers “as specified,” effective August 15, is a positive development that should improve the performance of its OSS.<sup>50</sup>

The Department’s Qwest Multistate I Evaluation raised concerns about Qwest’s manual order processing<sup>51</sup> and found that the “lack of regularly reported commercial data on manual accuracy render[ed] the record incomplete.”<sup>52</sup> Qwest subsequently submitted evidence derived from its own internal tracking of manual accuracy.<sup>53</sup> The Department left open the question of the reliability of these internal data, which were based on limited samples,<sup>54</sup> but opined that, if reliable, the data were responsive to the Department’s concerns about manual order processing accuracy.<sup>55</sup>

Since that Evaluation, Qwest has produced additional data pursuant to its proposed measure of service order accuracy, Performance Indicator Definition (“PID”) PO-20, as well as its continued commitment to monitor local service request/service order (“LSR/SO”) mismatches.<sup>56</sup> These new data reveal that the limited samples previously produced were an imperfect representation of Qwest’s performance: although the initial data had suggested that

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<sup>50</sup> Qwest Account Migration *Ex Parte* at 2 (as of August 15 Qwest has streamlined its migrate-as-specified procedures). The introduction of TN migration would also represent an important step in upgrading Qwest’s OSS. *Cf.* DOJ Georgia/Louisiana II Evaluation at 8.

<sup>51</sup> DOJ Qwest Multistate I Evaluation at 19-22.

<sup>52</sup> *Id.* at 21.

<sup>53</sup> Qwest Multistate I DOJ Issues *Ex Parte* at Tabs 4, 5. *See generally* Qwest Multistate I Service Order Accuracy *Ex Parte*.

<sup>54</sup> DOJ Qwest Multistate I Evaluation at 22 n.97 (Qwest’s service order accuracy data were based on an audit of the accuracy of a single field; Qwest’s LSR/SO mismatches data were derived from a one-week sample).

<sup>55</sup> *Id.* at 21-22. The Department also expressed concern that there was no process for CLECs and regulators to monitor and ensure adequate manual performance. *Id.* at 22.

<sup>56</sup> Qwest Response to FCC OSS Concerns *Ex Parte* at 5 (discussing PID PO-20 results); Qwest Performance Results *Ex Parte* (Regional Report) at 101 (PID PO-20 (Manual Service Order Accuracy (Percent))), 102 (order accuracy data related to PID OP-5 (New Service Installation Quality)); *see also* Qwest LSR/SO Mismatches *Ex Parte* at 1 (describing the data as a subset of PID OP-5); Qwest Multistate I DOJ Issues *Ex Parte* Tab 4 at 10, 13 (same).

Qwest's manual service order accuracy in processing resale and UNE-platform orders for April through July was 97 percent, the new data show that it actually ranged from 84 to 90 percent.<sup>57</sup> Qwest implemented a system enhancement on August 17 to automate certain edits to manually processed orders in order to improve handling accuracy.<sup>58</sup> Had this process been in place for the previously reported period, it appears that Qwest's accuracy would have improved to over 95 percent.<sup>59</sup>

However, Qwest's accuracy in processing features orders is reflected neither in the additional PID PO-20 data<sup>60</sup> nor in the data reported pursuant to the installation quality measure, PID OP-5.<sup>61</sup> For this reason, Qwest has produced data on mismatches between LSRs and the resulting Qwest internal service orders which show high accuracy overall.<sup>62</sup> Qwest also has provided data approximating the accuracy of its manual processing of features orders which show a slightly lower level of accuracy.<sup>63</sup>

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<sup>57</sup> Compare Qwest Response to FCC OSS Concerns *Ex Parte* at 5 (showing highest results in June and July: approximately 90 percent accuracy for resale and UNE-platform processing, based on a review of several LSR fields) with Qwest Multistate I DOJ Issues *Ex Parte* Tab 5 at 16-17 (approximately 97 percent accuracy in recording the "app" field). Qwest's manual service order accuracy in processing unbundled loop orders from April through July was 94 to 96 percent. Qwest Response to FCC OSS Concerns *Ex Parte* at 5 (discussing recent PID PO-20 results).

<sup>58</sup> *Id.* (describing enhancement).

<sup>59</sup> *Id.* (committing to recalculate data as if system enhancement were in place); Qwest Service Order Accuracy Comparison *Ex Parte* at 1-2 (presenting original and recalculated data).

<sup>60</sup> See AT&T Finnegan/Connolly/Menezes Decl. ¶ 195 & n.146 (noting Qwest's proposed PID PO-20 does not include review of the LSR fields that govern the ordering and provisioning of features).

<sup>61</sup> Qwest Multistate I DOJ Issues *Ex Parte* Tab 4 at 13.

<sup>62</sup> Qwest Performance Results *Ex Parte* (Regional Report) at 102 (reporting 99 percent accuracy for July).

<sup>63</sup> Qwest LSR/SO Mismatches *Ex Parte* at 3 (presenting data derived from Qwest's special review of manual orders for features and showing manual accuracy rates ranging from 95 to 98 percent). This data coupled with PID PO-20 data suggest that, at least until Qwest implemented the August 17 system enhancement, its total percent of human error did approach 15 percent. See Qwest Response to FCC OSS Concerns *Ex Parte* at 5 (reporting 84 percent accuracy rate for resale and UNE-platform POTS for May). *Contra id.* at 4 (Qwest's manual error rate is "certainly substantially less than the 15% alleged by AT&T and Covad.").

In order to permit further monitoring of manual processing performance, and to ensure maintenance of that performance, Qwest has begun reporting data pursuant to the proposed PID PO-20 in advance of its finalization through the PID-administration process and has committed to incorporate PO-20 into its post-entry QPAPs.<sup>64</sup> The Department agrees with commenters that Qwest's proposed PO-20 may be improved through the PID administration process,<sup>65</sup> but believes that Qwest's commitment will significantly improve the states' and the Commission's ability to enforce performance standards even prior to the measure's final definition.

#### **IV. Electronically Auditable Billing**

In its Qwest Multistate I Evaluation, the Department expressed concern about the electronic auditability of Qwest's wholesale bills.<sup>66</sup> Qwest had failed to clearly address the issue of whether its wholesale bills are electronically auditable in its initial filing but subsequently provided more detail in its various *ex parte* submissions and reply comments.<sup>67</sup>

Qwest implemented the Bill Output Specifications-Bill Data Type ("BOS-BDT") format<sup>68</sup> for its Customer Record and Information System ("CRIS")<sup>69</sup> UNE-platform bills on

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<sup>64</sup> Qwest PAP Revision *Ex Parte* at 1-2 (stating Qwest will file request to incorporate PO-20 into PAP with a 95 percent benchmark and specified penalties).

<sup>65</sup> See AT&T Finnegan/Connolly/Menezes Decl. ¶ 195; Covad Comments at 52. Qwest's most recent review of LSR/SO mismatches contains the only data on inaccuracies in the processing of orders for features. See Qwest Multistate I DOJ Issues *Ex Parte* Tab 4 at 13. Regardless of whether this data should be included in a revised PID PO-20 or in some other measure, Qwest's commitment to continue collecting and reporting such data will be critical to ensuring adequacy of its post-entry performance. *Id.* at 10, 13.

<sup>66</sup> See DOJ Qwest Multistate I Evaluation at 23-25.

<sup>67</sup> See *id.* at 24. Neither KPMG in the ROC OSS test nor CG in the Arizona OSS test assessed the electronic auditability of Qwest's wholesale bills. See KPMG *Final Report* at 435-80 (discussing billing test criteria but not auditability); CG *Final Report* at 97-112.

<sup>68</sup> The BOS-BDT format is designed to conform to an industry standard, thus facilitating the CLEC auditing process. Qwest Notarianni/Doherty Decl. Ex. 39 Attach. 1 at 1. The FCC has recognized that bills in the BOS-BDT format are electronically auditable. See FCC *New Jersey Order* ¶ 122 n.348; FCC *Pennsylvania Order* ¶ 17.

<sup>69</sup> CRIS is used for billing most resale and UNE products and was the focus of third-party testers CG and KPMG. Qwest Notarianni/Doherty Decl. ¶ 474; KPMG *Final Report* at 435; CG *Final Report* at 97.

July 1, 2002 -- after filing its first multistate application and before filing this second one.<sup>70</sup> The only evidence Qwest has submitted with regard to its BOS-BDT implementation relates to this initial release.<sup>71</sup> Moreover, Qwest encountered some problems in its initial BOS-BDT implementation.<sup>72</sup> Given this limited record, the Department once more cannot draw positive conclusions about the adequacy of Qwest's BOS-BDT format.<sup>73</sup> The Department recognizes, however, that additional information submitted during the Commission's consideration of Qwest's application may enable it to determine that Qwest's billing problems have been resolved.

In addition to describing its deployment of BOS-BDT, Qwest has submitted additional evidence regarding the electronic auditability of its CRIS bills in non-BOS-BDT formats. Qwest's billing system allows CLECs to receive their CRIS bills in a variety of electronic formats, including EDI, American Standard Code for Information Interchange ("ASCII"), and BOS-BDT.<sup>74</sup> Qwest maintains that the level of detail provided in the CRIS bills is sufficient to allow the CLECs to audit the bills for accuracy,<sup>75</sup> and that the EDI and ASCII formats are

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<sup>70</sup> Qwest Notarianni/Doherty Decl. ¶ 481 n.694; *see also* Qwest Notarianni/Doherty Decl. Ex. 39 Attach. 1 at 1. Qwest had not yet implemented the BOS-BDT format when it filed its first application for long distance authority, so the Department was unable to determine its effectiveness. DOJ Qwest Multistate I Evaluation at 23-25.

<sup>71</sup> *See* Qwest Notarianni/Doherty Decl. Ex. 39 at 1. AT&T, the only CLEC that received its July UNE-platform bills in BOS-BDT format, received such bills for Arizona, Colorado, and Washington. AT&T Finnegan/Connolly/Menezes Decl. ¶ 260.

<sup>72</sup> AT&T reports problems with its July BOS-BDT bills, including incorrect suffix codes (causing Qwest to resubmit bills), bills out of balance, and incorrectly formatted details. AT&T Finnegan/Connolly/Menezes Decl. ¶¶ 260-61; AT&T Qwest Multistate I Reply Comments at 36-37; *see also FCC Pennsylvania Order* ¶ 19 (describing numerous problems with Verizon's initial deployment of BOS-BDT).

<sup>73</sup> *See* DOJ Qwest Multistate I Evaluation at 24-25; *cf.* DOJ Pennsylvania Evaluation at 14, 17-18.

<sup>74</sup> Qwest Notarianni/Doherty Decl. ¶ 481. The overwhelming majority of CLECs receive their UNE-platform bills in ASCII format, along with a paper bill. *See* Qwest Multistate I Reply Notarianni/Doherty Decl. ¶ 181.

<sup>75</sup> *See* Qwest Notarianni/Doherty Decl. Ex. 39 at 2; *see also* Qwest Multistate I Reply Notarianni/Doherty Decl. ¶¶ 190-202 (describing the detail included in the three formats of CRIS bills); Qwest Notarianni/Doherty Decl. Ex. 39 at 2-5 (same). CLECs dispute whether Qwest provides a sufficient level of detail to



compatible with commercially available software, enabling a CLEC to verify the accuracy of the bills electronically.<sup>76</sup> Qwest only recently has described the process by which CLECs can transfer the information from ASCII or EDI bills to publicly available software.<sup>77</sup>

CLECs dispute the electronic auditability of CRIS bills, discounting Qwest's statements about the ability simply to load the wholesale bill data into publicly available software.<sup>78</sup> The Department still does not have sufficient evidence to resolve this dispute and to determine the feasibility of using commercial technology to audit Qwest's wholesale bills electronically. Whereas the EDI and ASCII formats may be inadequate for CLECs with large billing volumes,<sup>79</sup> Qwest has presented evidence that for some CLECs these formats, when coupled with commercially available software, enable electronic auditing.<sup>80</sup> If evidence of an adequately functioning BOS-BDT format is added, the record could support a positive assessment of Qwest's billing capabilities.

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audit the bills. AT&T Finnegan/Connolly/Menezes Decl. ¶ 263 (describing lack of summarized costs with which to calculate unit price for the recurring charges and lack of details about end-user's local calls); WorldCom Lichtenberg Decl. ¶¶ 90-92 (detailing different level of detail in Qwest's three billing centers, limited availability of USOC level detail, and lack of USOCs for recurring charges).

<sup>76</sup> See Qwest Notarianni/Doherty Decl. Ex. 39 at 3; Qwest Multistate I Reply Notarianni/Doherty Decl. ¶¶ 179-82, 209-12.

<sup>77</sup> See Qwest Notarianni/Doherty Decl. Ex. 39 at 3; Qwest Multistate I Reply Notarianni/Doherty Decl. ¶¶ 179-82, 209-12; *see also* Qwest Notarianni/Doherty Decl. Ex. 39 Attach. 12 at 1, Attach. 13 at 1. Qwest also has submitted testimonials and evidence of CLECs electronically auditing their bills. See Qwest Multistate I Reply Notarianni/Doherty Decl. ¶¶ 213-14, Ex. 32 at 1 (Broadmargin describing how it audits Qwest invoices), 4 (Ionex noting that it audits Qwest bills).

<sup>78</sup> See AT&T Finnegan/Connolly/Menezes Decl. ¶ 262 (contending that file limitations and the burden on CLECs to develop their own software prevent ease of auditability); WorldCom Lichtenberg Decl. ¶¶ 90, 92 (describing different levels of detail and data-mapping issues that cause problems for CLECs).

<sup>79</sup> See AT&T Finnegan/Connolly/Menezes Decl. ¶ 262.

<sup>80</sup> See Qwest Notarianni/Doherty Decl. Ex. 39 at 3, Attach. 12 at 1-6 (describing processes and software for ASCII format), Attach. 13 at 1-5 (same for EDI).

Given the impact of these problems on competitors,<sup>81</sup> the Department believes that the Commission should carefully examine whether these billing problems have been addressed sufficiently to alleviate these concerns. Although the Department is unable to endorse Qwest's application on the existing record, it acknowledges that the Commission may be in a position to approve the application at the culmination of these proceedings if it can assure itself that billing problems are adequately resolved.

## **V. Testing for Line-Sharing Orders**

As required by the FCC, Qwest unbundles the high-frequency portion of its loops so that CLECs can provide DSL service to customers who receive voice service from Qwest.<sup>82</sup> Covad maintains that Qwest often improperly provisions such lines with cross connections that are "poor, problematic or non-existent,"<sup>83</sup> and that it has had to open trouble tickets on 11 to 15 percent of its line-sharing orders in May and June.<sup>84</sup> Covad claims that these provisioning problems are not new and therefore, since 1999, it has asked Qwest for a router test of end-to-end continuity of the data signal on such lines.<sup>85</sup> Qwest and the CLECs had agreed on a line-sharing verification test ("LSVT") as part of the provisioning of line-shared loops,<sup>86</sup> but Covad argues that experience has proved the LSVT inadequate to resolve problems with that provisioning.<sup>87</sup>

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<sup>81</sup> See AT&T Finnegan/Connolly/Menezes Decl. ¶¶ 253, 255; WorldCom Lichtenberg Decl. ¶¶ 89-91, 95; DOJ Qwest Multistate I Evaluation at 23 n.101; cf. DOJ Pennsylvania Evaluation at 11-12 (detailing competitive impact of lack of electronically auditable bills).

<sup>82</sup> *FCC Georgia/Louisiana Order* ¶ 157 n.562; see also Qwest Br. at 76 n.39 (stating Qwest's commitment to abide by line-sharing rights and obligations subsequent to the mandate in *United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), including the FCC rules in effect).

<sup>83</sup> Covad Comments at 16.

<sup>84</sup> *Id.* at 19; see also Covad July Data *Ex Parte* at 1 (noting Covad submitted trouble tickets for 10.2 percent of orders closed in July as of August 16).

<sup>85</sup> *Id.* at 20-21.

<sup>86</sup> See *id.* at 21; Washington UTC Workshop Tr. at 4787-89.

<sup>87</sup> Covad Comments at 22.

Although Qwest has instituted router testing for its retail customers, it still refuses to perform the router test requested by Covad.<sup>88</sup> Qwest has presented no justification for its refusal to provide the same router testing for CLECs as it does for its retail customers. If Qwest does not agree to follow the same provisioning process for both wholesale and retail customers, then it must provide a detailed explanation justifying its refusal to do so, including data demonstrating that the performance results are equivalent even where the testing process differs.

## **VI. Stand Alone Test Environment**

In its Qwest Multistate I Evaluation, the Department described the development of Qwest's Stand Alone Test Environment ("SATE"), its use by CLECs, and the extent to which it mirrors the production environment.<sup>89</sup> SATE appears to operate similarly enough to the production environment to ensure that CLECs are "capable of interacting smoothly and effectively"<sup>90</sup> with Qwest's OSS.<sup>91</sup> However, the Department continues to believe that the data gathered for PID PO-19B, which measures the extent to which SATE results mirror responses received in actual production transactions,<sup>92</sup> should be monitored to ensure that SATE enables CLECs to test their interfaces effectively.

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<sup>88</sup> *Id.*

<sup>89</sup> DOJ Qwest Multistate I Evaluation at 27-31. Nothing in the record of Qwest's second multistate application leads the Department to revise its conclusions that Qwest's redesigned CMP is sufficient to determine and implement necessary changes to its OSS and that its record of compliance is adequate. *See id.* at 25-27.

<sup>90</sup> *FCC Georgia/Louisiana Order* ¶ 187.

<sup>91</sup> Qwest's performance results are consistent with this perception. *See* Qwest Performance Results *Ex Parte* (Regional Report) at 99 (PID PO-19 (Stand Alone Test Environment (SATE) Accuracy (Percent)) (approximately 95 percent accuracy from December through June 2002 nationwide), 99-100 ((PID PO-19A (Stand Alone Test Environment (SATE) Accuracy (Rels. 8.0, 9.0, 10.0, & VICKI) (Percent)) (nearly 100 percent accuracy in July 2002 for all releases and Virtual Interconnect Center Knowledge Initiator ("VICKI") nationwide)); *see also* DOJ Qwest Multistate I Evaluation at 29-31.

<sup>92</sup> Qwest Performance Results *Ex Parte* (Regional Report) at 100 (PID PO-19B (Stand Alone Test Environment (SATE) Accuracy (Percent)) (preliminary results show approximately 99 percent accuracy in mirroring production environment nationwide)). Some CLECs assert that the PO-19B measure should be adjusted to include more products and transactions. *See, e.g.,* AT&T Finnegan/Connolly/Menezes Decl. ¶ 115 n.78.

## VII. TELRIC Pricing

Qwest adjusted its UNE and interconnection rates in Montana, Utah, Washington, and Wyoming shortly before it filed this Section 271 application, on the basis of rates ordered by the Colorado PUC on June 6, 2002.<sup>93</sup> Each state commission permitted these rates to go into effect in July.<sup>94</sup>

The new prices in Montana, Utah, Washington, and Wyoming were derived through Qwest's attempt to benchmark the rates to those recently ordered in Colorado using the Commission's Universal Service Fund ("USF") model.<sup>95</sup> Comparisons between states can be a useful way to set as well as to analyze rates and there is no reason to "make a distinction between cost-based rates and rates that equal cost-based rates."<sup>96</sup> However, to be valid the exercise must rely on accurate benchmark comparisons between the states at issue. Qwest relied on the Commission's model to determine average cost differentials between the Qwest regions in different states.<sup>97</sup>

However, some questions have been raised about the ability of the Commission's model to determine accurately the TELRIC rates for interoffice transport and whether the modeled rates may be more inaccurate for some states than for others, thereby undermining the meaningfulness of the comparisons between the states at issue here.<sup>98</sup> Specifically, AT&T argues that the

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<sup>93</sup> Colorado PUC Comments at 26-36.

<sup>94</sup> Montana PSC Comments at 56; Utah PSC Section 271 Compliance Order at 2; Washington UTC Comments at 17 & App. 5; Wyoming PSC Comments Attach. J ¶¶ 5-6; *see also* Qwest Br. at 165-66 & n.82.

<sup>95</sup> Qwest Br. at 159-65; *see also* DOJ Qwest Multistate I Evaluation at 32 n.156 (stating two concerns with the Colorado rates).

<sup>96</sup> *FCC Kansas/Oklahoma Order* ¶ 82 n.244, ¶ 87.

<sup>97</sup> Qwest Br. at 162-63; *see also* DOJ Qwest Multistate I Evaluation at 32 (describing benchmarking process and criticizing Qwest's apparent failure to adjust the model for the sale of certain high-cost exchanges); *see also* Qwest Thompson (Utah) Decl. ¶ 40 n.74 (recognizing need to adjust for sale of high-cost exchanges in benchmarking the Utah rates to Colorado rates).

<sup>98</sup> AT&T Lieberman/Pitkin Decl. ¶ 20.

Commission's modeling of interoffice transport costs substantially overstates those costs in Montana and Wyoming as compared to Colorado and, therefore, relying on the model to calculate benchmarked differences between those states without correcting for the different degree of inaccuracy results in an overstatement of non-loop costs in Montana and Wyoming.<sup>99</sup> The Department urges the Commission to consider this problem and possible solutions to it.<sup>100</sup>

In addition, the Department urges the Commission to take notice of the unusual rate zones adopted in Montana and Wyoming; rather than assigning each wire center to a zone based on its population density, Montana and Wyoming adopted zones within each wire center based on the distance of the customer from the central office.<sup>101</sup> Thus, unlike other states for which Section 271 applications have been approved, which used zones to help control for cost differences *between* wire centers, Montana and Wyoming implemented zones that control for cost differences *within* wire centers.<sup>102</sup> Given the particular cost and regulatory environments in Montana and Wyoming, the Commission should consider the effectiveness of their rate zones relative to the rate zones implemented in other states.<sup>103</sup> For these reasons, it is unclear whether the rates relied upon by Qwest fall within a range that a reasonable application of TELRIC would produce. The Department urges the Commission to carefully consider this issue, although it

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<sup>99</sup> *Id.* ¶ 17 (arguing the Commission's model overstates the interoffice facilities necessary in certain states including Montana and Wyoming).

<sup>100</sup> *Cf. id.* ¶ 21 (arguing the Commission should exclude the costs of inter-office facilities from the benchmarking analysis among Colorado and Montana and Wyoming).

<sup>101</sup> Qwest Pricing *Ex Parte* at 11. Zones in Montana and Wyoming are based on distance from the central office ("CO"), i.e., the three de-averaged zones lie in rings around each CO. *See* AT&T Fassett/Mercer Decl. ¶ 53 (describing Wyoming zones), ¶ 65 (describing Montana zones).

<sup>102</sup> *See* AT&T Lieberman/Pitkin Decl. ¶ 17 (Qwest's benchmarking analysis only masks the impact of the unique "ring" zones on the de-averaging methodology).

<sup>103</sup> This particular zone design not only affects the accuracy of the de-averaged rates but also CLECs' abilities to plan and execute their entry in those states; i.e., because each CO in Montana and Wyoming has lines in three different zones, a CLEC cannot know the zone in which a particular customer is located without contacting Qwest. *Id.* ¶ 56. *But see* Qwest Pricing *Ex Parte* at 12 (noting Qwest's pre-order address validation tools provide CLECs with customer addresses and associated rate zones).

defers to the Commission's ultimate determination of whether the prices supporting this application are appropriately cost-based.<sup>104</sup>

### **VIII. Conclusion**

Qwest's application demonstrates that it has succeeded in opening its local markets to competition in many respects. However, the Department cannot support this application as filed given the issues addressed herein, many of which were raised by Qwest's first multistate application. Qwest continues to submit substantial additional evidence which, if sufficiently meaningful and reliable, may support the granting of long distance authority in Montana, Utah, Washington, and Wyoming. Based on this record, and subject to the Commission's assuring

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<sup>104</sup> DOJ Rhode Island Evaluation at 6; DOJ Missouri I Evaluation at 1-2; DOJ Kansas/Oklahoma Evaluation at 11. In addition to being cost-based, the rates must also remain in effect for a sufficient period of time to permit competitive entry. *See* DOJ New Jersey II Evaluation at 4-5. The Commission should assure itself that the Utah rates relied upon by Qwest will remain in effect as necessary. *See* AT&T Lieberman/Pitkin Decl. ¶ 55 (Qwest is advocating higher rates in Utah's pending cost docket).

itself that the concerns expressed in this Evaluation have been resolved, the Department recommends that the FCC approve Qwest's application.

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I hereby certify that I have caused a true and accurate copy of the foregoing Evaluation of the United States Department of Justice to be served on the persons indicated on the attached service list by first class mail, overnight mail, hand delivery, or electronic mail on August 21, 2002.

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